GOVERNMENT OF INDIA
DISINVESTMENT
LOK SABHA

UNSTARRED QUESTION NO:5611
ANSWERED ON:30.04.2003
APPROPRIATE GUIDELINES ON APPOINTMENT
PRAKASH YASHWANT AMBEDKAR

Will the Minister of DISINVESTMENT be pleased to state:

(a) whether the Government have formulated any guidelines on the appointment of investment bankers for disinvestment of Government share holdings in Public Sector Undertakings (PSUs)and transfer of management control to private sector;

(b) if so, the details thereof; and

(c) if not, the reasons for not making such guidelines?

Answer

THE MINISTER OF COMMUNICATIONS AND INFORMATION TECHNOLOGY AND MINISTER OF DISINVESTMENT (SH SHOURIE)

(a), (b) & (c): Advisers to assist the Government in the process of disinvestment through strategic sale are appointed through a process of competitive bidding on the basis of eligibility criterion based on sector expertise, experience, research capabilities, qualifications of the deal team etc. as decided by an Inter-Ministerial Group specifically set up for each disinvestment consisting of representatives of the administrative Ministry, concerned PSU, Department of Public Enterprises, Ministry of Finance, Department of Legal Affairs and the Ministry of Disinvestment.In addition, Advisers are also required to be eligible under the guidelines issued by the Ministry of Disinvestment on 13th July, 2001 which are enclosed as Annexure-I.Expressions of Interest are invited through an advertisement in the leading newspapers and the advertisement is also posted on the web site of the Ministry of Disinvestment, the concerned administrative Ministry and the concerned PSU. The interested parties are also required to make a presentation before the Inter-Ministerial Group which evaluates the proposals received and recommends the appointment of a particular Adviser to the Core Group of Secretaries on Disinvestment chaired by the Cabinet Secretary, the recommendations of which, are put before the Minister of Disinvestment for approval. Generally, Advisers have been either merchant bankers, consultancy companies or accounting firms.

Annexure I referred to part (a) to (c) of the Lok Sabha Unstarred Question No. 5611 for 30.4.2003.

No. 6/4/2001-DD-II
Government of India
Department of Disinvestment
Block 14, CGO Complex
New Delhi.
Dated 13th July, 2001.

OFFICE MEMORANDUM

Subject: Guidelines for qualification of Advisors for disinvestment process

Government has examined the issue of framing comprehensive and transparent guidelines defining the criteria for selection of Advisors, so that the parties selected through competitive bidding inspire public confidence. Earlier, a set of criteria like sector experience, knowledge, commitment etc. used to be prescribed. Based on experience and in consultation with concerned departments, Government has decided to prescribe the following additional criteria for the qualification / disqualification of the parties to act as Advisors to the Government for the disinvestment transactions:-

(a) Any conviction by a Court of Law or indictment / adverse order by a regulatory authority for a grave offence against the Advising concern or its sister concern would constitute a disqualification. Grave offence would be defined to be of such a nature that it outrages the moral sense of the community. The decision in regard to the nature of offence would be taken on a case to case basis after considering the facts of the case and relevant legal principles by the Government. Similarly, the decision in regard to the relationship between the sister concerns would be taken, based on relevant facts and after examining whether the two concerns are substantially controlled by the same person/persons.

(b) In case such a disqualification takes place, after the entity has already been appointed as Advisor, the party would be under an obligation to withdraw voluntarily from the disinvestment process, failing which the Government would have the liberty to terminate the

appointment / contract.

(c) Disqualification shall continue for a period that Government deems appropriate.

(d) Any entity, which is disqualified from participating in the disinvestment process, would not be allowed to remain associated with it or get associated merely because it has preferred an appeal against the order based on which it has been disqualified. The mere pendency of appeal will have no effect on the disqualification.

(e) The disqualification criteria would come into effect immediately and would apply to all the Advisors already appointed by the Government for various disinvestment transactions, which have not yet been completed.

(f) Before disqualifying a concern, a Show Cause Notice why it should not disqualified would be issued to it and it would be given an opportunity to explain its position.

(g) Henceforth, these criteria will be prescribed in the advertisements seeking Expressions of Interest (EOI) from the interested parties to act as Advisor. Further, the interested parties shall be required to provide with their EOI an undertaking to the effect that no investigation by a regulatory authority is pending against them. In case any investigation is pending against the concern or its sister concern or against the CEO or any of its Directors/Managers/Employees, full details of such investigation including the name of the investigating agency, the charge/offence for which the investigation has been launched, name and designation of persons against whom the investigation has been launched and other relevant information should be disclosed, to the satisfaction of the Government. For other criteria also, similar undertaking will be obtained along with EOI.They would also have to give an undertaking that if they are disqualified as per the prescribed criteria, at any time before the transaction is completed, they would be required to inform the Government of the same and voluntarily withdraw from the assignment.

(h) The interested parties would also be required to give an undertaking that there exists no conflict of interest as on the date of their appointment as Advisors in handling of the transaction and that, in future, if such a conflict of interest arises, the Advisor would immediately intimate the Government of the same. For disinvestment proposes, 'conflict of interest' is defined to include engaging in any activity or business by the Advisor in association with any third Party, during the engagement, which would or may be reasonably expected to, directly or indirectly, materially adversely affect the interest of Government of India or the Company (being disinvested) in relation to the transaction, and in respect of which the Advisor has or may obtain any proprietary or confidential information during the engagement, that, if known to any other client of the Advisor, could be used in any manner by such client to the material disadvantage of Government of India or the Company (being disinvested) in the transaction. The conflict of interest would be deemed to have arisen if any Advisor firm/concern, has any professional or commercial relationship with any bidding firm / concern for the same disinvestment transaction during the pendency of such transaction. In this context, both Advisor firm and bidding firm would mean the distinct and separate legal entities and would not include their sister concern, group concern or affiliates etc. The professional or commercial relationship is defined to include acting on behalf of the bidder or undertaking any assignment for the bidder of any nature, whether or not directly related to disinvestment transaction.

(i) On receiving information on conflict of interest, the Government would give the option to the Advisor to either eliminate the conflict of interest within a stipulated time or withdraw from the transaction and the Advisor would be required to act accordingly, failing which Government would have the liberty to terminate the appointment/contract.

-sd/-

(A.K. Tewari)
Under Secretary to the Government of India.